

§ 25.11

40 CFR Ch. I (7–1–12 Edition)

provision of paragraph (a) of this section and a provision of a State's administrative procedures act, the State's law shall apply.

§ 25.11 Work elements in financial assistance agreements.

(a) This section is applicable to activities under § 25.2(a)(5) except as otherwise provided in parts 30 or 35.

(b) Each applicant for EPA financial assistance shall set forth in the application a public participation work plan or work element which reflects how public participation will be provided for, encouraged, and assisted in accordance with this part. This work plan or element shall cover the project period. At a minimum, the work plan or element shall include:

(1) Staff contacts and budget resources to be devoted to public participation by category;

(2) A proposed schedule for public participation activities to impact major decisions, including consultation points where responsiveness summaries will be prepared;

(3) An identification of consultation and information mechanisms to be used;

(4) The segments of the public targeted for involvement.

(c) All reasonable costs of public participation incurred by assisted agencies which are identified in an approved public participation work plan or element, or which are otherwise approved by EPA, shall be eligible for financial assistance.

(d) The work plan or element may be revised as necessary throughout the project period with approval of the Regional Administrator.

§ 25.12 Assuring compliance with public participation requirements.

(a) *Financial assistance programs*—(1) *Applications.* EPA shall review the public participation work plan (or, if no work plan is required by this chapter for the particular financial assistance agreement, the public participation element) included in the application to determine consistency with all policies and requirements of this part. No financial assistance shall be awarded unless EPA is satisfied that the public participation policies and requirements

of this part and, any applicable public participation requirements found elsewhere in this chapter, will be met.

(2) *Compliance*—(i) *Evaluation.* EPA shall evaluate compliance with public participation requirements using the work plan, responsiveness summary, and other available information. EPA will judge the adequacy of the public participation effort in relation to the objectives and requirements of § 25.3 and § 25.4 and other applicable requirements. In conducting this evaluation, EPA may request additional information from the assisted agency, including records of hearings and meetings, and may invite public comment on the agency's performance. The evaluation will be undertaken as part of any mid-project review required in various programs under this chapter; where no such review is required the review shall be conducted at an approximate midpoint in continuing EPA oversight activity. EPA may, however, undertake such evaluation at any point in the project period, and will do so whenever it believes that an assisted agency may have failed to meet public participation requirements.

(ii) *Remedial actions.* Whenever EPA determines that an assisted agency has not fully met public participation requirements, EPA shall take actions which it deems appropriate to mitigate the adverse effects of the failure and assure that the failure is not repeated. For ongoing projects, that action shall include, at a minimum, imposing more stringent requirements on the assisted agency for the next budget period or other period of the project (including such actions as more specific output requirements and milestone schedules for output achievement; interim EPA review of public participation activities and materials prepared by the agency, and phased release of funds based on compliance with milestone schedules.) EPA may terminate or suspend part or all financial assistance for non-compliance with public participation requirements, and may take any further actions that it determines to be appropriate in accordance with parts 30 and 35 of this chapter (see, in particular, §§ 30.340, Noncompliance and 30.615–3, Withholding of Payments, and